



August 6, 1999

Mr. Lou Bright
General Counsel
Texas Alcoholic Beverage Commission
P.O. Box 13127
Austin, Texas 78711-3127

OR99-2210

Dear Mr. Bright:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 127185.

The Texas Alcoholic Beverage Commission (the "commission") received a written request for "all reports realating [sic] to the San Antonio nightclub Mexico Q Nice (MB423926), regarding any and all violations or alleged violations." You state that the commission has released to the requestor, with certain redactions, some of the requested documents, presumably in compliance with section 5.47 of the Alcoholic Beverage Code (the "code"), which requires the commission to make available to the public its records of "all violations of this code by permittees and licensees, records introduced and made public at hearings, and decisions resulting from the hearings relating to the violations." You contend that all other requested documents are made confidential under section 5.48 of the code, and thus are excepted from required public disclosure pursuant to section 552.101 of the Government Code.¹

Before addressing the applicability of section 5.48 to the records you seek to withhold, we first address the propriety of the redactions made to the documents released to the requestor. You explain that prior to releasing some of the requested documents, the commission

¹Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

redacted from those documents certain individuals' social security numbers and drivers' license numbers. A social security number is excepted from required public disclosure under section 552.101 of the Government Code in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), *if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. See Open Records Decision No. 622 (1994).*

It is not apparent to us that the social security numbers contained in the records at issue were obtained or are maintained by the commission pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the commission to obtain or maintain a social security number. Therefore, we have no basis for concluding that the social security numbers at issue were obtained or are maintained pursuant to such a statute and are therefore confidential under section 405(c)(2)(C)(vii)(I). We caution the commission, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing the social security numbers, the commission should ensure that these numbers were not obtained or are maintained by the commission pursuant to any provision of law enacted on or after October 1, 1990.

We additionally note, however, that the 76th Texas Legislature recently passed House Bill 692, which provides as follows:

SECTION 1. CONFIDENTIALITY OF SOCIAL SECURITY NUMBER. The social security number of an applicant for or holder of a license, certificate of registration, or other legal authorization issued by a licensing agency to practice in a specific occupation or profession that is provided to the licensing agency is confidential and is not subject to disclosure under the open records law.

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Act of May 17, 1999, 76th Leg., R.S., H.B. 692. The governor signed this bill on May 25, 1999; accordingly, this law is now in effect. The commission must now withhold the social security numbers of licensees or license applicants pursuant to House Bill 692.

Section 552.130(a)(1) of the Government Code requires that the commission withhold "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state." Because this type of information is made confidential under section 552.130(a) of the Government Code, we agree that the commission must withhold the drivers' license numbers pursuant to section 552.130(a)(1).

We now address whether the remaining documents at issue, which you have designated as Attachment D, are made confidential under section 5.48 of the code. Section 5.48 provides as follows:

(a) "Private records," as used in this section, means all records of a permittee, licensee, or other person other than the name, proposed location, and type of permit or license sought in an application for an original or renewal permit or license, or in a periodic report relating to the importation, distribution, or sale of alcoholic beverages required by the commission to be regularly filed by a permittee or licensee.

(b) The private records of a permittee, licensee, or other person that are required or obtained by the commission or its agents, in connection with an investigation or otherwise, are privileged unless introduced in evidence in a hearing before the commission or before a court in this state of the United States.

The term "privileged" in this statute has been construed by this office to mean "confidential" for purposes of the Public Information Act. *See* Attorney General Opinion JM-1235 at 2 (1990); Open Records Decision Nos. 186 (1978), 62 (1974).

You explain that the documents contained in Attachment D

consist of records maintained by the permittee during the normal course of business. These records were requested from the permittee by [a commission investigator] and attached to his investigation report. Since . . . no administrative action was ever taken by the agency in this case, the permittee's business records were never introduced in evidence in a hearing before the commission or before a court.

Given your representation, we agree that the records contained in Attachment D are made confidential pursuant to section 5.48 of the code. Accordingly, the commission must withhold these records from the public pursuant to section 552.101 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "Yen-Ha Le".

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/RWP/nc

Ref.: ID# 127185

Encl. Submitted documents

cc: Mr. John Spong
Texas Monthly
P.O. Box 1569
Austin, Texas 78767
(w/o enclosures)